North Scott CSD / SEIU Local 199 (mixed) 2006-2007
CEO 461
SECTOR 2



IN THE MATTER OF THE IMPASSE BETWEEN

| | |
|---|---|
| SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 199, Union, and NORTH SCOTT COMMUNITY SCHOOL DISTRICT, Employer. | IOWA PUBLIC EMPLOYMENT RELATIONS BOARD CASE NO. CEO 461/2 FINDINGS OF FACT, RECOMMENDATIONS AND REPORT OF FACT-FINDER |

APPEARANCES

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On March 28, 2007, in Eldridge, Iowa, a hearing was held before Thomas P. Gallagher, Fact-Finder, who was selected by the parties under the provisions of the Iowa Public Employment Relations Act (the "Act"), as amended, to make recommendations concerning collective bargaining issues about which the parties are at impasse.

## BACKGROUND

The North Scott Community School District (the "Employer," the "District" or "North Scott") operates the public schools in the area just north of Davenport, Iowa. The Union is the collective bargaining representative of two bargaining units of the Employer's employees. One of those bargaining units consists of the Bus Drivers who work for the Employer. The parties refer to the employees in the other bargaining unit as "Classified" employees -- those who are classified as Custodians, Matrons, Groundskeepers, Delivery Workers, Secretaries, Mechanics, Maintenance Workers, Aides and Cooks.

The Union and the Employer are parties to a labor agreement that establishes the terms and conditions of employment for the Classified employees during the period July 1, 2006, through June 30, 2007 (the "current labor agreement"). In this proceeding, they seek to resolve a bargaining impasse relating to a new labor agreement covering the Classified employees that will be effective from July 1, 2007, through June 30, 2008 (the "new labor agreement").

The parties have agreed about most of the provisions of the new labor agreement. They have not been able to resolve their differences, however, with respect to issues that I describe below.

## Negotiability Dispute

### Findings of Fact.

During bargaining, the Employer proposed that six provisions included in the current labor agreement -- Articles VIII,

XI, XII, XIV, XXI and XXIV -- be deleted from the new labor agreement, asserting that the Employer need not negotiate about retention of those articles because the Union's proposals to retain them in the new labor agreement are permissive subjects of bargaining about which the Employer is not required to negotiate. On March 5, 2007, the Employer filed a Petition for Resolution of Negotiability Dispute (the "Petition") with the Iowa Public Employment Relations Board ("PERB"), in which it sought a ruling that bargaining about retention of the six articles is permissive. On March 20, 2007, the Union filed its response to the Petition, seeking PERB's ruling that bargaining about the six articles is mandatory.

With respect to each of the six articles described in the Petition, the Employer's final fact-finding position presented at the hearing before me on March 28, 2007, states "Delete - permissive." During the hearing, the Union made known its opposition to the Employer's negotiability position, indicating that issues relating to negotiability of the six articles would be decided by PERB's ruling on the Petition. Neither party presented any substantive argument why the articles should or should not be retained in the new labor agreement. It is clear that the parties did not seek a substantive fact-finding recommendation from me with regard to the retention of these six articles, and that, instead, they intended to await a ruling from PERB on the Employer's Petition.

On March 30, 2007, PERB informed me of its preliminary rulings with respect to the Petition, which it issued on March

29, 2007. Below, I set out the relevant parts of PERB's preliminary rulings on the Petition:

> The proposals at issue, followed by the Board's preliminary rulings thereon, are as follows:
>
> Proposal 1:
>
> ARTICLE VIII - EARLY DISMISSAL
>
> When school is dismissed early because of weather conditions, the employee's day shall terminate at the same time as the teacher's unless the employee's job must, at the discretion of the immediate supervisor, be completed that day and employees shall be paid for the hours worked on such days. An employees overtime pay calculation will not be reduced by reason of hours not worked due to an early dismissal because of weather conditions. Employees that leave early on such days will be allowed to make up the lost time during the same pay period in coordination with their immediate supervisor. If the early dismissal occurs on the last day of the pay period the employer will have two working days to schedule the make-up. Work assigned as make-up may not be the employees regular type of work.
>
> RULING: This proposal is a mandatory subject of bargaining except for the underlined sentence, which is permissive.
>
> Proposal 2:
>
> ARTICLE XI - AGENDA
>
> A copy of the school board agenda shall be mailed to the president of the Union.
>
> RULING: This proposal is a permissive subject of bargaining.
>
> Proposal 3:
>
> ARTICLE XII - UNION MEETINGS
>
> One hour shall be allowed twice each year without loss of compensation to attend Union meetings. The administration shall approve the time of the meetings.
>
> RULING: This proposal is a mandatory subject of bargaining.

Proposal 4:

ARTICLE XIV - UNIFORMS

Mechanics, custodians, and lunchroom workers will receive up to $60 total per year toward the purchase of uniforms. Mechanics' uniforms will be provided by the district and laundered by the district. Employees who work less than two (2) hours per day shall have a uniform allowance of $30. Receipts must be presented to receive reimbursement. Cooks shall receive four (4) aprons per year.

RULING: This proposal is a permissive subject of bargaining.

Proposal 5:

ARTICLE XXI - HEALTH PROVISIONS

A. Physical Examinations
Physical Examinations shall be required of personnel upon their initial appointment. After employment, the employee shall have a physical examination every three (3) years unless otherwise required by law. An examination form approved by the Board shall be provided upon request. The District will not reimburse the employee for required physical if they are covered by the District's health and major medical program. The District will reimburse the employee who is not eligible for coverage under the District's health and major medical program up to $75.00.

B. Tuberculin Tests
Tuberculin Tests shall be as often as required by State law and/or State education standards. The tine skin test shall be used, if available, if the employee has not reacted to this test previously. All persons with previous or newly discovered positive reactions shall have x-rays paid by the district.

RULING: This proposal is a permissive subject of bargaining.

Proposal 6:

ARTICLE XXIV - FILES

Employees shall have the right to review and reproduce the contents of their personnel files except confidential materials. An employee's personnel file shall be available for the employee's inspection. A representative of the Union, at the employee's request, may accompany the employee in this review. The employee shall have the right to respond to all materials

contained in his/her file, which responses shall become a part of his/her file. Copies of any materials evaluative in nature or relating to the employee's work assignment which are placed in his/her personnel file are to be provided to the employee within ten (10) school days of its placement in the file. The employee shall sign and date evaluations and work assignment related materials at the time they are placed in the file. The signature shall mean awareness of the material and not agreement.

RULING: This proposal is a permissive subject of bargaining except for the underlined portions, which are mandatory.

Recommendation.

Because the parties have not asked that I make a substantive recommendation with respect to the six articles that are the subject of their negotiability dispute, I do not make one. I do recommend, however, in accord with PERB's rulings on the Petition, 1) that the portions of the six articles identified by PERB as mandatory be retained in the new labor agreement, and 2) that the portions of the six articles identified by PERB as permissive by deleted from the agreement.

## ITEMS AT IMPASSE

Aside from the matters that are the subject of the negotiability dispute, described above, the parties have not been able to resolve their differences with respect to the following "impasse items":

I. Insurance

II: Leaves
  A. Seven-day limit on use of family illness leave
  B. Pro-ration of sick leave, family illness leave and personal leave for Aides working four days per week

III: Wages

In making my recommendations in this proceeding, I have considered, among others, the factors specified in the Act as

those that must be considered by a panel of arbitrators. Section 20.22, Subdivision 9, Code of Iowa. The text of that subdivision is set out below:

> The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
>
> b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
>
> d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

## EXTERNAL COMPARISON

The Union proposes the use of a comparison group of six other school districts as the proper group for external comparison -- all of the other districts in the Mississippi Athletic Conference, the conference to which the District belongs. Below, I list the districts in the athletic conference (hereafter, the "MAC Group") with the enrollment of each:

| | |
|---|---|
| Bettendorf | 4,095 |
| Burlington | 4,629 |
| Clinton | 4,375 |
| Davenport | 16,492 |
| Muscatine | 5,560 |
| Pleasant Valley | 3,372 |
| Average | 6,420 |
| North Scott | 3,002 |

The Union argues that it is appropriate to use this group because the parties have used it in past bargaining.

The Employer argues that North Scott is different in character from the other districts in the MAC Group because it is less urban, notwithstanding its proximity to Davenport. The Employer does not object to the use of the MAC Group as part of an external comparison, but it would add another group of school districts to the comparison -- the five districts in the state with enrollment size just below that of North Scott and the five with enrollment size just above that of North Scott (hereafter, the "Five-Five Group"). Below, I list the districts in the Five-Five Group with the enrollment of each:

| | |
|---|---|
| College Community | 3,657 |
| Pleasant Valley | 3,372 |
| Indianola | 3,336 |
| Newton | 3,329 |
| Urbandale | 3,318 |
| Western Dubuque | 2,742 |
| Lewis Central | 2,560 |
| Oskaloosa | 2,457 |
| Fort Madison | 2,406 |
| Keokuk | 2,354 |
| Average | 2,933 |
| North Scott | 3,002 |

The Union argues that the Employer's Five-Five Group loses relevance because many of the districts in the group are not geographically near North Scott and thus are affected by different local economies and living standards.

## I: INSURANCE

Relevant parts of Article XX of the current labor agreement are set out below:

All employees working thirty (30) or more hours per normal work week shall be eligible to elect coverage in the following insurance plans. The Board shall select the carrier.

A. Health and Major Medical

Each eligible employee and his or her immediate family members shall be covered by a health and major medical program that meets the following minimum specifications. . .

5.The employer shall pay 100% of the single premium of the eligible employee and 90% of the eligible employee family premium. The employee shall pay the balance of the family premium cost. . . .

At the time of the hearing in this matter, about 160 employees worked in the Classified employees' bargaining unit. Most of them work in classifications that require their services during the entire calendar year, but sixty-six employees -- those who work in food service and those who work as Aides -- work only during the school year. Of these less-than-full-year employees, thirty-nine elect single coverage and twenty-seven elect family coverage.

The Employer's Position.

The Employer proposes that the new labor agreement be amended by adding the following new provision to Article XX:

New employees hired after July 1, 2007, working less than 215 days per year will receive 100% district-paid single insurance with the option to purchase family coverage. (Current employees will be grandfathered.)

The Union's Position.

The Union opposes the change in Article XX proposed by the Employer. It would leave the article unchanged for the new contract term.

Findings of Fact and Recommendation.

The Employer argues that the cost of providing health insurance coverage to employees has risen so substantially in recent years that it needs some relief from the cost of providing that insurance. Since 1997-98, the cost of wages at the Step 1 level has increased by a total of 23%, while the cost of health insurance has increased by a total of about 180%. For the forthcoming year, the Employer estimates that the cost of health insurance will rise by about $21,800. The Employer makes this proposal as a means of finding some relief from the substantial increases in the cost of health insurance.

The Union opposes the change sought by the Employer. It urges that the change would exclude employees in greatest need from the Employer's current contribution of 90% of the cost of family coverage. The Union notes that the Employer made a similar proposal in bargaining for the 2004-05 labor agreement and that, when the parties reached impasse, the same proposal was rejected by Arbitrator Wilford H. Stone. The Union argues that the Employer has shown no rationale justifying a change in the decision reached by Stone.

The Employer argues that the continuing increase in the cost of health insurance since Stone's decision is a change of circumstance that justifies revisiting the issue. It estimates that, eventually, when all twenty-seven employees with family coverage who work less that 215 days per year have been replaced by turnover, it would save about $168,000, based on current premiums. The Employer also argues that a comparison of

insurance benefits provided by the districts in its two comparison groups favors its position on this issue. It presented information that nine of the nineteen other districts in the two groups make some payment for family coverage in behalf of employees in similar classifications, without eliminating coverage for those who work less than a full year. It argues, however, that two of those districts pay only a small amount of the premium and that no other district pays as much as North Scott does.

The Employer also argues that, because of budget constraints caused partly by the high cost of the insurance benefit it provides, it has been required to provide students with a lower level of service from Classified employees than is provided by districts in its comparison groups.

Arbitrator Stone's decision states that none of the Employer's other employees have a similar restriction on their eligibility for family health insurance coverage, and the Union argues that the Employer's proposal still lacks any support from internal comparison.

I recommend the Union's position on this impasse item -- that the Employer's proposed amendment to Article XX not be adopted. Though the Employer showed that insurance costs have continued to rise since this issue was addressed in the 2004-05 arbitration decision, the evidence does not show a change that would justify elimination of this needed benefit for future employees who earn so little in hourly wages -- while employees in other classifications would suffer no similar loss.

## II: LEAVES

### A. SEVEN-DAY LIMIT ON USE OF FAMILY ILLNESS LEAVE

Article III of the current labor agreement provides sick leave benefits to employees. Section C of Article III is set out below:

> Definition.
> 1. Sick leave shall be that leave which is necessary because of illness or injury of the employee of such nature that the employee cannot perform the duties of his/her position.
> 2. Family Illness: Up to seven (7) days of leave per year with pay shall be granted to employees for serious illness or accidents in the employee's immediate family -- immediate family being defined as husband, wife, children, parents of spouse and parents of employee. . . .

The Union's Position.

The Union proposes that, for the new contract term, Article III, Section C(2), be amended by deleting the seven-day limit on the use of sick leave for family illness.

The Employer's Position.

The Employer opposes the amendment of Article III, Section C(2), sought by the Union. It would continue its language unchanged during the new contract term.

Findings of Fact and Recommendation.

The Union makes the following argument. The seven-day limit on the use of sick leave for family illness came into the Classified employees' labor agreement many years ago when the Employer represented to the Union that the the District's Teachers would accept the same limit during bargaining for their labor agreement. The Teachers did not accept that limit, and

their labor agreement still has no similar limit on the use of sick leave for family illness.

The Employer makes the following arguments. The burden is on the proponent to show a substantial need for a proposed change in contract provisions that have been in the agreement for many years. The seven-day limit on the use of sick leave for family illness has been in the parties' labor agreement at least since 1984-85. If it is to come out of the agreement, it should be bargained out. It should not be deleted in impasse proceedings. Further, the Employer argues that, of the nineteen comparison districts in the two comparison groups, only Pleasant Valley (ten-day limit), Oskaloosa (eight-day limit with permission of the superintendent) and Clinton (up to eight days depending on years of service and prior usage) allow more than seven days usage of sick leave for family illness.

I recommend no change in Article III, Section C(2). A change of this longstanding provision should be made in the give and take of bargaining. The District's Teachers may have retained the unlimited use of sick leave for family illness in the bargaining process. External comparison shows that no comparison district allows such use of sick leave without limitation, and only a few have a slightly higher limit.

## B. PRO-RATION OF SICK LEAVE, FAMILY ILLNESS LEAVE AND PERSONAL LEAVE FOR AIDES WORKING LESS THAN FOUR DAYS PER WEEK

Article IV of the current labor agreement is entitled, "Temporary Leaves of Absence." In its four sections, it provides for several kinds of leave, including among others,

personal leave, which is established by Article IV, Section B(1)(c), set out below:

> Two days per year of approved personal leave with pay shall be granted all employees. Approved leave beyond this amount shall be without pay. Personal leave may accumulate up to three (3) days.

The Employer's Position.

The Employer proposes that, in the new labor agreement, the following provision be added as Article IV, Section E:

> E. Aides working four days a week will receive 80% of the sick leave, family illness leave and personal leave available to employees working five days a week

The Union's Position.

The Union opposes the addition of this provision to the new labor agreement. It would retain Article IV as it appears in the current labor agreement.

Findings of Fact and Recommendation.

Most of the Aides employed by the Employer work five days per week. Because pre-school classes are scheduled only four days per week, however, Aides who work in those classes have a matching schedule of only four days per week.

The Union is a state-wide union with about thirty chapters -- twenty of them at school districts. On August 10, 2005, Joseph Hintze, the Employer's Director of Business Affairs proposed to the Co-Presidents of the Union's North Scott Chapter that the two Aides working in the pre-school program at Virgil Grissom Elementary School have their sick leave, family illness leave and personal leave pro-rated so that they would receive

80% of the amount of leave received by Aides working a five-day week. On August 19, 2005, Karen Skaala, one of the Chapter Co-Presidents, sent Hintze an e-mail in which she informed him that she had "talked to all our officers and we are in agreement with your pro-rated leave time."

The current labor agreement does not include a provision that formally adopts the pro-ration of leave as agreed to by Skaala's e-mail of August 19, 2005. The Employer would now have the new labor agreement include a provision that formally adopts the pro-ration that was the subject of the Employer's August, 2005, proposal.

The Union argues that the agreement reached with Skaala has no binding effect on the Union because she, as a Chapter officer, had no authority to act for the Union. The Union argues that binding agreements can be made only with the Union as an organization as a whole, through the authorized representative of the whole organization.

The Employer has decided to start another pre-school program, at Armstrong Elementary School. This program would also be one that meets four days per week and that would be served by two Aides working a four-day work week. The Employer argues that Skaala was authorized to bind the Union to pro-rate the leaves of Aides in the pre-school program, and that, at least, her agreement constituted the acceptance of a practice now binding on the Union.

I accept the Union's argument that the agreement of Chapter officers is not sufficient to create a binding amendment

to the labor agreement. If the Employer would amend the labor agreement, it must do so by bargaining with representatives who have authority to make and change the agreement. The evidence does not establish that Skaala or other Chapter officers had that authority. Further, I find that the use of pro-ration for a short time does not show a binding practice requiring its continuation. I note 1) that I make this finding only because the Employer has argued that Skaala's agreement of August 19, 2005, constituted an acceptance of the practice and 2) that I have no authority in this proceeding to decide as a grievance arbitrator whether a binding past practice was created.

I agree with the Union that this provision should be introduced to the agreement in bargaining and not through the impasse process, and accordingly, I recommend that it not be adopted.

## III: WAGES

Appendix A of the current labor agreement establishes hourly wage rates for bargaining unit members. It specifies fifteen different wage schedules that vary by classification and by responsibility within the classification. For example, a Secretary is paid under a slightly lower wage schedule than the wage schedule that sets the wages of the Secretary to a School Principal. Below, I set out several typical wage schedules, but not each one. Because the wage proposals of both parties call for across-the-board increases, it is unnecessary to set out each of the fifteen wage schedules in the current labor agreement.

For Custodians and Groundskeepers, Appendix A specifies a starting hourly rate and two annual step increases, thus:

| | |
|---|---|
| Step 1 | $13.11 |
| Step 2 | $13.28 |
| Step 3 | $13.43 |

Custodians and Groundskeepers with more responsibility receive slightly higher wage rates, but with the same two-step advancement to the top. Mechanics, Assistant Mechanics and Sign-Language Interpreters also have a schedule with two annual step advancements after the starting rate.

For Secretaries, Appendix A specifies a starting hourly rate and four annual step increases, thus:

| | |
|---|---|
| Step 1 | $ 9.90 |
| Step 2 | $10.26 |
| Step 3 | $10.41 |
| Step 4 | $10.56 |
| Step 5 | $10.81 |

Secretaries with more responsibility receive higher wages, but with the same four-step advancement to the top. Lunch Room Helpers, Cooks, Bakers, Aides and the Van Driver also have a schedule with four annual step advancements after the first step.

The Union's Position.

The Union proposes that the new labor agreement increase the wage rates specified in Appendix A of the current labor agreement by $0.45 per hour, across-the-board.

The Employer's Position.

The Employer proposes that the new labor agreement increase the wage rates specified in Appendix A of the current labor agreement by $0.25 per hour.

Findings of Fact and Recommendation.

The Employer's authorized Regular Program Growth ("new money") for the 2007-08 school year is 3.84% or $592,355. The Employer estimates that, if its position is adopted on all impasse items, the total package increase in cost attributable to the new labor agreement will be $101,942 -- a total package increase of 3.09% of its total package cost of $3,303,629 for the 2006-07 school year. The Employer estimates that, if the Union's position is adopted on all impasse items, the total package increase in the cost of the new labor agreement will be $149,316 -- a total package increase of 4.52%. The Union accepts the Employer's calculations of total package cost increases.

It appears that the adoption or non-adoption of the parties' positions on Leaves, discussed above, would have only insignificant effect on these estimates, and I note that the Employer has not included change in the cost of leaves in its estimate of total package costs. It also appears that the savings the Employer projects if its position on Insurance were to be adopted would come largely in the future as turnover occurs, and, appropriately, the Employer has not included any saving from that proposal in its estimate of total package costs.

The Employer does, however, include in its estimates of total package cost increases, the cost of the annual insurance premium increases of $21,812. In addition, the Employer's estimates include the increased cost attributable to step movement and to FICA and IPERS.

The Union argues that the Classified employees have fallen behind the Teachers of the District over the past ten years in the total package increases received and that the relatively low wages of the Classified employees when compared to the Teachers justifies a higher increase now. The Teachers' labor agreement provides a total package increase for 2007-08, the second year of a two-year contract, of 4.46%.

The Union argues that for most classifications in the bargaining unit the Employer's wage rate is about $1.00 per hour less than the average in the MAC Group, though the wages of Food Service employees compares favorably. The Union presented evidence about total package settlements for employees in similar classification in several school districts in eastern Iowa, ranging from 2.73% to 6.2% with new money ranging from 2.25% to 11.49%. The Union argues that the Employer has sufficient financial capacity to pay an increase approaching the $0.45 per hour that it seeks.

The Employer argues that the insurance benefit it provides to bargaining unit employee should be included when making external comparisons of compensation. It presented evidence that the cost of benefits it pays for bargaining unit personnel ranks at the top of the Five-Five Group and that, for the MAC Group, its ranking is second -- adjusting the ranking to a per pupil basis to account for the relatively small size of North Scott. The Employer argues that when external comparisons are made including an adjustment for the cost of family health insurance, its ranking is either first or second among the districts in both the MAC Group and the Five-Five Group.

The Employer argues that it has raised the compensation of its Teachers in recent years at a relatively higher rate than that of other classifications because the Teachers needed improvement in the relatively low pay they were receiving compared to districts in the comparison groups.

I recommend that the wage rates of bargaining unit employee be increased by $0.35 per hour, across-the-board. That increase, with step movement, FICA and IPERS, will provide a total package increase of about $125,625, or 3.8%, about the equivalent of the percentage increase in the District's new money. It is consistent with external comparisons. The increase is slightly higher than the 3.5% increase that the District's Bus Drivers settled for and slightly lower than the increase the Teachers will receive in the second year of their two-year agreement. The evidence shows that the Employer has sufficient financial ability to pay this increase.

April 4,, 2007

Thomas P. Gallagher, Fact-Finder

CERTIFICATE OF SERVICE

I certify that on the 4th day of April, 2007, I served the foregoing Findings of Fact, Recommendations and Report of Fact-finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

For the Union:

Mr. Douglas Peters
Representative
Service Employees
International Union
Local 199
102 Second Avenue
Coralville, IA 52241-2687

For the Employer:

Mr. Gary L. Ray
President
Ray & Associates, Inc.
Suite 407
4403 First Avenue Southeast
Cedar Rapids, IA 52402

I further certify that on the 4th day of April, 2007, I will submit these Findings of Fact, Recommendations and Report of Fact-finder for filing by mailing it to the Iowa Public Employment Relations Board, 510 East Twelfth Street, Suite 1B, Des Moines, IA 50319.

April 4, 2007

Thomas P. Gallagher, Fact-finder